

## TITLE 329 SOLID WASTE MANAGEMENT BOARD

#00-47(2)(SWMB)

### SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On January 16, 2001, the solid waste management board (board) conducted the first public hearing/board meeting concerning the readoption and amendments to 329 IAC 1-1, 329 IAC 12-2 and 329 IAC 13-3. Comments were made by the following parties:

Mark Shere, Bethlehem Steel Corporation (MS)

Following is a summary of the comments received and IDEM's responses thereto.

*Comment:* That's an excerpt from the used oil portion of the rule that is proposed for preliminary adoption today, and I have no idea what it means. It's my job to read stuff like this. It's been my job for going on about twelve years now. So you can imagine how a person who runs a small business must feel if they take the trouble to look at the rules of the state of Indiana. A lot of business people check the regulations on the internet. He would see 27 pages of this kind of language just about used oil, and chances are that's the last time that business owner is ever going to check the Indiana rules to help him out with a problem and find out what the requirements are, and that's a bad thing. At large companies, this kind of regulatory language is just a constant monkey on the back of the environmental professionals who try to keep the company in compliance. The Indiana law is that to the extent possible all rules adopted by this board and other administrative bodies shall be written for ease of comprehension. . Indiana law says that rules adopted by the board and other administrative bodies must avoid duplicating standards found in federal laws. Incorporate the federal rules by reference, if need be, but keep the Indiana rule book understandable. So what about all the old rules that are still on the Indiana book from decades past? A number of them, like this used oil rule were not written for ease of comprehension, and they duplicate extensive federal requirements. (MS)

*Response:* The rules were written out for the convenience of the regulated community and because there were additional language changes necessary in the rule. The rule does follow the federal rule language but in the prescribed Indiana format. Indiana rules are drafted according to the Administrative Rules Drafting Manual, approved and published by the Indiana Legislative Council, September 10, 1997. Incorporating federal regulations does not necessarily make a rule more understandable, since then two rule books are involved, state and federal. It is a tool to avoid promulgating thousands of pages of Federal rule language such as the hazardous waste rules that are currently about 1200-1300 pages of double column, small-type, difficult to understand, language.

*Comment:* The old rules basically expire every seven years. This expiration allows IDEM and this board to take a hard look at the old rules to see if they still serve a purpose and to see if they still comply with the law. Here's what the used oil rule is today. It's 27 pages of tiny little single-spaced type. Almost all of these 27 pages merely repeat the 24 pages of the federal regulations on used oil. But there's little differences scattered all over the state rule, so I honestly don't know what a person need to do differently under the state rule compared to the federal rule. I do know one thing that's not different. Indiana law, the statute, has one sentence about used oil. That sentence says a person may not apply or allow the application of used oil to any ground surface unless they get a permit. Easy to understand. None of the differences I've found in the 27 pages of Indiana rules and 24 pages of the federal rules have anything to do with that sentence. (MS)

*Response:* These rules are consistent with and as stringent as the federal rules. The federal authorization for these rules is pending. At both the preliminary adoption hearing and the final adoption hearing, staff verbalized to the board and the hearing attendees the exact differences between and federal and state rules. For businesses in Indiana, the state rules are the rules that have to be complied with. Federal authorization of the state program and state rules makes complying with federal law moot. The state program serves in lieu of the federal program. As stated at the meeting there are two citations in the used oil rules that are more stringent than the federal rules: 1. 329 IAC 13-3-1(b)(2) Used oil mixed with characteristic hazardous waste identified in 40 CFR 261 Subpart C are subject to 329 IAC 3.1. The federal rules allow for used oil mixed with a characteristic ignitable hazardous waste to be burned; the state rule does not allow it. 2. 329 IAC 13-10-3 Used oil cannot be used as a dust suppressant in Indiana, as per the Indiana statute. The federal rules are silent on this issue.

*Comment:* I also know something else that's not different between the federal rules and the state rules. The federal rule does not have a provision to identify types of violations that could be considered minor, neither does the Indiana rule. That's a problem because the law of Indiana includes a minor violations statute that directs this board to adopt rules to identify what kind of violations are minor. This law is important to people because minor violations are subject to a lower penalty cap under the statute as long as you fix them right away, and you don't do it again. That minor violations statute is five years old, and IDEM has never presented this board with a single word of regulations—proposed regulations to put the law into effect. The minor violations statute does not even appear on the regulatory schedules and agendas the agency puts out for future rulemaking, on of which an updated one you have before you today. It's easy for responsible companies to have an inadvertent violation of these used oil rules. There's all kinds of little labeling requirements, for example, or you can have a very small spill that gets cleaned up right away, just the way it's supposed to be under the state spill rules and I've seen IDEM enforcement staff claim that that's a violation of the used oil rules. None of this should be news to anyone at the agency. It would take almost no effort. It would be like falling off an oil drum to insert a sentence or two in the state used oil rules to identify a couple of classes of minor violations. (MS)

*Response:* IDEM has implemented this law from its inception in 1995 in our enforcement referral and enforcement policies. The majority of discovered violations that qualify as a “minor violation” under this statute are handled without a formal referral and without any civil penalty in our compliance programs. In some instances, violations that may qualify as “minor violation” are included in enforcement actions involving other non-“minor” violations at a facility. During any given year, our inspectors find hundreds of rule violations that although not environmentally harmful at the time of discovery, could pose an environmental threat or threaten the effectiveness of the environmental program if left uncorrected. Such violations are generally dealt with “on the spot” with a verbal warning and a verification that the compliance problem has been rectified or by the issuance of a warning or violation letter noting the violation and indication that the problem needs to be corrected. In those cases, where the initiation of a formal enforcement action would serve little purpose and expend valuable Agency resources for no or little environmental benefit, IDEM uses its enforcement discretion to ensure that any compliance issues are resolved without resorting to formal enforcement action.

*Comment:* Please do not preliminarily adopt this rule today. Please ask IDEM to take the hard look at this rule that the agency has so conspicuously avoided. Ask IDEM to delete language that repeats the federal rules unless there’s a good reason to keep it. (MS)

*Response:* The rules were written out for the convenience of the regulated community and because there were additional language changes necessary in the rule. The regulated community only needs one set of rules, the Indiana rules, to read, understand and comply with. It can even be more difficult to understand the rules if two (2) sets of rules, state and federal, must be used to determine compliance. The codification of our state rules into the federal rules is done so that the federal government even enforces the rules using the state rules. The codification also points out which provisions are different or more stringent.

*Comment:* Ask IDEM to identify each place that these rules, the state rules, are different from the federal standards so that people at least understand what’s going on here and to give a good reason for differences that are to be kept. (MS)

*Response:* These rules are consistent with and as stringent as the federal rules. The federal authorization for these rules is pending. There are two citations in the used oil rules that are more stringent than the federal rules: 1. 329 IAC 13-3-1(b)(2) Used oil mixed with characteristic hazardous waste identified in 40 CFR 261 Subpart C are subject to 329 IAC 3.1. The federal rules allow for used oil mixed with a characteristic ignitable hazardous waste to be burned; the state rule does not allow it. 2. 329 IAC 13-10-3 Used oil cannot be used as a dust suppressant in Indiana. Regarding the regulatory status of mixtures of characteristic hazardous waste with used oil, the federal regulatory language effectively sanctions the dilution of concentration-based hazardous waste when mixed with used oil, an allowance that is not consistent with the dilution prohibition in the hazardous waste rules at 40 CFR 261.3(a)(2)(iv) and 40 CFR 261.3(c)(1) and (2) and 40 CFR 261.3(d)(2). The federal rules are silent on this issue.

*Comment:* Ask the agency to take a look and see if it would really be so much effort to include a couple of sentences in this rule to begin to respond after five years to that minor violations law. (MS)

*Response:* If the environmental boards decide to go forward with a rulemaking to formally implement IC 13-30-7-1 et seq., the Agency would present them with a framework of criteria for assessing the “minor” status of a particular violation or set of violations, in lieu of categorizing the thousands of potential situations that may exist. Those criteria would mirror the existing statutory provisions and would likely reflect the same common sense approach that the Agency is currently using to remedy minor regulatory violations without resorting to formal enforcement action. However the agency is implementing this statute without rules.

*Comment:* In the scale of things, this used oil rule is not a big deal. These little ones, they add up, and they add up, until after a while you’ve got a rule book that no ordinary person can understand, that has language that ordinary people ridicule, and that does not comply with the laws of Indiana written by our elected officials. (MS)

*Response:* The rules of the solid waste management board are reviewed by the Attorney General of Indiana to determine compliance with the Indiana statutes. The Attorney General will only sign the final rules if the rule is in compliance with all Indiana statutes and case law.